

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1 JUSTIN EDMISTEN,

2 v. Plaintiff,

3 PICKENS, *et al.*,

4 Defendants.

5 Case No. 3:22-cv-00439-ART-CLB
6 ORDER OVERRULING OBJECTIONS
7 TO DENIALS OF PREMATURE
8 MOTIONS FOR SUMMARY
9 JUDGEMENT (ECF NOS. 24, 41)

10 Plaintiff Justin Edmisten brings this case against several employees of Ely
 11 State Prison, alleging Defendants used excessive force against him, or oversaw
 12 the use of excessive force against him, which resulted in his bloodied face, vision
 13 impairment, ear damage, and other serious injuries. Before the Court are two
 14 Objections (ECF Nos. 24, 41) to Magistrate Judge Carla Baldwin's Orders (ECF
 15 Nos. 23, 36), which deny Mr. Edmisten's Motions for Summary Judgement
 16 because they were filed too early in the litigation process. This Court agrees with
 17 Judge Baldwin's reasoning, so it overrules Mr. Edmisten's Objections and
 18 upholds Judge Baldwin's orders.

19 When a magistrate judge makes a "non-dispositive" decision—one that
 20 does permanently resolve aspects of the case—a district judge may overturn that
 21 decision if it is "clearly erroneous or contrary to law." *Bhan v. NME Hospitals, Inc.*,
 22 929 F.2d 2404, 1414 (9th Cir. 1991); 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P.
 23 72(a); LR IB 3-1(a). Though decisions on motions for summary judgment are
 24 usually dispositive, they are not dispositive when, like here, the plaintiff is free to
 25 seek summary judgement again at a later date.

26 A party against whom summary judgement is sought "must have had
 27 sufficient time and opportunity for discovery before a moving party [can seek
 28

1 summary judgement].” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*,
 2 210 F.3d 1099, 1105-06 (9th Cir. 2000) (citing *Celotex Corp. v. Catrett*, 477 U.S.
 3 317, 322, (1986)). Although Fed. R. Civ. P. 56 allows a party to file a motion for
 4 summary judgment “at any time,” that rule also allows the court to deny the
 5 motion or order a continuance for the opposing party to pursue discovery. Fed.
 6 R. Civ. P. 56 (Advisory Committee's Notes (2010 Amendments Subdivision (b))).

7 Mr. Edmisten filed his first Motion for Summary Judgement before
 8 discovery began in this case. (ECF No. 22.) He filed his second motion just one
 9 month into discovery. (ECF No. 35.) This did not give either side enough time to
 10 develop evidence in support of their claims. If neither side can develop evidence,
 11 then a motion for summary judgement—which asks the court to determine that
 12 one side has insufficient evidence as a matter of law—is inappropriate. See *Nissan*
 13 *Fire*, 210 F.3d at 1105-06.

14 The Court wants to be clear: this Order does not bar Mr. Edmisten from
 15 filing a motion for summary judgment in the future. Nor does it say anything
 16 about the strength of Mr. Edmisten’s claims. Mr. Edmisten will have to wait for
 17 an appropriate time to file his motion. A motion for summary judgement would
 18 be more appropriate once discovery has ended or is at least significantly
 19 underway. The Court reminds Mr. Edmisten that discovery is set to complete on
 20 January 15, 2024. (ECF No. 28.)

21 It is therefore ordered that Mr. Edmisten’s Objections (ECF Nos. 24, 41) to
 22 Judge Baldwin’s Orders dismissing his Motions for Summary Judgement as
 23 premature are overruled.

24 Dated this 26th day of October 2023.

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 26 _____
 27 ANNE R. TRAUM
 28 UNITED STATES DISTRICT JUDGE